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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Interconnection and Resale Obligations  
Pertaining to  
Commercial Mobile Radio Services

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CC Docket No. 94-54

To: The Commission

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PETITION FOR RECONSIDERATION OR CLARIFICATION  
OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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**I. INTRODUCTION**

Pursuant to Section 1.429 of the Rules of the Federal Communications Commission ("Commission"), Nextel Communications, Inc. ("Nextel") respectfully submits this Petition for Reconsideration or Clarification of the Commission's First Report and Order ("Order") in the above-captioned proceeding.<sup>1/</sup>

In the Order, the Commission concluded that the cellular resale rule should be extended to other Commercial Mobile Radio Service ("CMRS") providers.<sup>2/</sup> Nextel fundamentally disagrees that resale obligations are necessary in a competitive wireless marketplace. The Commission's initial use of the cellular resale obligation was necessitated by the fact that, at the time, the wireless marketplace was a cellular-only duopoly. Given the entry of new CMRS providers, mandatory resale obligations are no longer necessary to ensure a competitive marketplace.

Nextel therefore files this Petition seeking reconsideration or clarification of the following issues: (1) reconsideration of

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<sup>1/</sup> First Report and Order, FCC 96-263, released July 12, 1996.

<sup>2/</sup> Order at para. 7.

the extension of resale obligations to all CMRS providers -- particularly Specialized Mobile Radio ("SMR") operators whose systems have technical, operational or capacity constraints that do not readily permit resale of their services; (2) clarification that, if the resale obligations are extended, the definition of "covered SMR" does not encompass local, non-cellular, primarily dispatch SMR systems; and (3) clarification that system capacity limitations are "reasonable" restrictions on resale.

## II. DISCUSSION

A. The Commission incorrectly concluded that extension of the cellular resale rule to other CMRS providers is in the public interest

The Commission's decision to extend the cellular resale rule to Personal Communications Services ("PCS") licensees and "covered SMR" licensees is not in the public interest. In a competitive marketplace with two cellular providers, up to six PCS providers, and one or more "covered SMR" providers, a resale obligation is not necessary to promote competition.<sup>3/</sup> The Commission initially imposed resale obligations in a cellular marketplace that, by regulatory mandate, consisted of only two licensees per market -- one of which had been provided a significant regulatory-created headstart. Today, there are more than two providers per market, and the regulatory lag between the licensing of each provider is not significant enough to justify resale obligations. Therefore,

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<sup>3/</sup> The Commission itself recognizes the increasing competitiveness of the wireless telecommunications marketplace by including a sunset provision on the resale obligation. Order at para. 24.

the Commission should have simply eliminated the resale obligation for all CMRS licensees.

Should the Commission nonetheless affirm extending the obligation to other CMRS providers, it should exclude all SMR licensees because resale by SMR providers is technically infeasible and could create operational problems that result in degraded SMR services to the public. Sections 201 and 202 of the Communications Act only require that common carriers make their services available at just and reasonable rates and on terms and conditions that are not unreasonably discriminatory.<sup>4/</sup> This reasonableness standard allows the Commission to exempt certain classes of providers from the resale obligation when they can show that fulfilling the obligation would be unreasonable. As Nextel has shown in this proceeding, a mandatory resale obligation is unreasonable, unnecessary and technologically infeasible for SMR services.<sup>5/</sup>

The Order summarily dismisses arguments concerning the technical limitations of SMR systems, whether wide-area or local, that make unlimited resale impossible, e.g., loss of control over

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<sup>4/</sup> See 47 U.S.C. Sections 201 and 202. See also Section 251 (b) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Act"), wherein Congress impose resale obligations only on local exchange carriers ("LECs"). In the Act, Congress expressly concluded that CMRS carriers are not LECs. Section 153(44) of the Act. See also First Report and Order, FCC 96-325, CC Docket No. 96-98, released August 8, 1996, at para. 1004, wherein the Commission also concluded that CMRS carriers are not LECs.

<sup>5/</sup> See Reply Comments of Nextel, filed July 14, 1995, at pp. 6-8, citing, among other things, unique equipment from operator to operator, limited capacity, operation on shared spectrum, and a lack of uniform technological standards in the industry.

system use and capacity. The Commission sidesteps these facts, stating that there is no obligation to "respond to any and all requests for bulk capacity" and therefore no threat of an SMR losing control over its network.<sup>6/</sup> This does not address or resolve the concerns of SMR providers that mandated resale could result in loss of control over system operations due to, among other things, the incompatible SMR technology platforms in use today and the lack of individual identification numbers in most SMR units.<sup>7/</sup>

Maintaining control over an SMR system is not simply a matter of controlling "network growth," as concluded by the Commission.<sup>8/</sup> Nextel must retain control over the daily operations of its systems to provide customers satisfactory SMR services, particularly those systems on which Nextel is migrating customers from analog, traditional services to its new digital services. Because the Commission has not yet completed the transition from site-by-site to geographic area SMR licensing, Nextel has a different number of channels at each site, resulting in varying capacity throughout the system. Nextel must closely monitor and manage the addition and migration of customers to ensure that there is sufficient capacity at a particular site to provide service to all of its customers. Until these transitions

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<sup>6/</sup> Order at para. 20.

<sup>7/</sup> See, e.g., Comments of Nextel, Comments of the American Mobile Telecommunications Association.

<sup>8/</sup> *Id.*

are completed, mandated resale compromises the SMR operator's ability to provide high-capacity, competitive wireless services.

For purposes of a resale requirement, SMRs -- whether wide-area or traditional -- are sufficiently distinct from cellular and PCS systems to justify their exclusion. Congress has specifically recognized that all CMRS should not be subject to identical regulations.<sup>9/</sup> The Commission itself has recognized that "the statute does not compel the rigid application of a uniform rule but affords the Commission the discretion to fashion 'comparable' rules."<sup>10/</sup> Where it is in the public interest to distinguish among providers, as it is in this case, the Commission should refrain from imposing a new obligation on certain CMRS providers where the burden of compliance would outweigh the competitive benefits.

- B. If the Commission imposes a resale obligation on "covered SMRs," it should clarify that it is excluding local, non-cellular systems providing primarily dispatch communications

If the Commission nonetheless affirms extending the resale obligations to "covered SMRs," it must clarify the scope of the rule's application. In the Order, the Commission defined "covered SMRs" as those SMRs "that hold geographic area licenses" or "who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR service, either by waiver or under Section 90.629 of

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<sup>9/</sup> Congress required the Commission to establish "comparable" regulations. See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title IV, Section 6002 (d) (3).

<sup>10/</sup> Third Report and Order, 9 FCC Rcd 7988 (1994) at para. 80.

[the] rules."11/ Following that specific delineation of "covered SMRs" the Commission stated that "local SMR licensees offering mainly dispatch services to specialized customers in a non-cellular system configuration, as well as licensees offering data, one-way, or stored voice services on an interconnected basis, are not covered by the resale rule. . ."12/

The Commission's definition is insufficiently clear given that a significant number of prospective geographic licensees and current extended implementation licensees are "local SMR licensees offering mainly dispatch services" to the public. The mere fact that an SMR operator has received a geographic license or an extended implementation grant does not mean it will configure its service on a "cellular-like" basis and offer enhanced wireless telecommunications services to the public. The current definition, therefore, may be read to include numerous SMR systems that the Commission appears to have expressly intended to exclude from the resale obligation.13/

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11/ Order at para. 19.

12/ *Id.*

13/ As written, local, primarily dispatch SMR systems on the lower 230 SMR channels would be subject to this new obligation if they chose to obtain a geographic area license through the proposed auction and settlement process in the Industry Consensus Proposal. See Joint Reply Comments of SMR WON, the American Mobile Telecommunications Association, and Nextel, filed in PR 93-144 on March 1, 1996. The Commission must clarify its definition to avoid discouraging local SMRs from obtaining a geographic license in order to avoid regulatory requirements, such as resale, that would impose more burdens on local dispatch systems than competitive benefits for customers.

On reconsideration, the Commission should amend and/or clarify the definition of "covered SMR" to ensure that it excludes those "local" SMR systems that offer, as the Commission described it, "mainly dispatch services to specialized customers in a non-cellular configuration." The term "covered SMR" should encompass only those SMR systems that offer consumers two-way voice services using a mobile telephone switching facility. This definition would ensure that "covered SMR" encompasses only high capacity SMR systems with the licensed channels divided into groups that are then assigned to specific geographic cells (as defined in Section 22.2), that can be reused in different cells within the service area and are capable of automatically handing off a mobile unit's call as that mobile unit travels throughout the service area.<sup>14/</sup>

Further, the Commission should make clear that the amended definition is applied on a system-by-system basis. A specific licensee can hold many SMR licenses -- some of them for single site dispatch, non-cellular systems; others for wide-area, two-way voice services using a switching facility. A single SMR licensee may provide cellular-like services on one system while providing only local, primarily dispatch services on another system. Therefore, consistent with the Commission's conclusion that local SMR systems could be overburdened by the imposition of resale obligations, they should not be applied to any local SMR system -- regardless of who

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<sup>14/</sup> See Section 22.2 of the Commission's rules for the definition of a "cellular" system. Nextel's proposed definition of "Covered SMR" would ensure that only systems similarly configured to a cellular system would be covered by the resale obligations.



is operating it. The mere fact that Nextel, for example, may offer enhanced wide-area SMR services in New York does not warrant the imposition of resale obligations on Nextel's local SMR systems in Arkansas and Kentucky.<sup>15/</sup> These local SMR systems are no different than any other local SMR, operated by any other licensee. Imposing the resale obligation on such small, local systems could impose enormous costs on the system without corresponding benefits.

C. The Commission should clarify that system capacity constraints justify a refusal to permit unrestricted resale

In its Comments and Reply Comments in this proceeding, Nextel expressed concern that the Commission's resale obligations would require carriers to permit resale of their services even if their system was experiencing capacity limitations. Forcing resale under such circumstances could create serious technical and operational problems, resulting in, among other things, interrupted service to customers. The Order prohibits restrictions on resale that are "unreasonable;" Nextel seeks clarification that capacity limitations justify a carrier's refusal to permit resale and are therefore "reasonable" under the Commission's Order.<sup>16/</sup>

As Nextel migrates customers from its analog SMR systems to its digital wide-area systems, it must maintain sufficient capacity to balance the migration of analog customers while adding new digital customers, while at the same time transitioning spectrum

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<sup>15/</sup> As with any local SMR system, providing primarily dispatch services, "the costs of applying the resale policy to [Nextel's local SMR] operations would presumably outweigh the benefits." Order at para. 19.

<sup>16/</sup> See Order at para. 12.

from analog to digital use. This requires a careful balancing of the capacity/frequencies required to serve existing analog customers, to launch the digital system, and to manage migration of spectrum from analog to digital use. If Nextel were required to give up capacity to a reseller, it could create significant operational problems since there could be insufficient capacity to effectively establish digital service, serve existing analog customers, migrate customers to the new digital services and provide a reseller with capacity. Avoiding operational problems that could interrupt service is a "reasonable" restriction and should justify a refusal to permit resale. On reconsideration, the Commission should clarify the Order accordingly.

### III. CONCLUSION

Resale obligations are not necessary in the newly competitive wireless telecommunications marketplace. With two cellular carriers, up to six PCS carriers, and SMR licensees all competing in the marketplace, the need for resale obligations for any CMRS provider has vanished. However, should the Commission nonetheless extend the resale obligation, it should not apply to any SMR provider because it is unreasonable, unnecessary and technologically infeasible for SMR licensees to allow resale of their services.

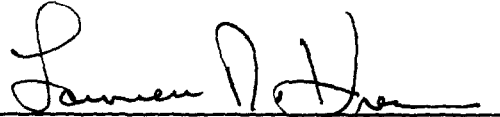
Should the Commission nonetheless include "covered SMRs" within the resale obligations, the term must be clarified to ensure that traditional, primarily dispatch SMR systems are not subject to

the resale obligations since they do not provide mass-marketed enhanced telecommunications services.

The Commission also must clarify that "reasonable" restrictions on resale include refusals based on capacity limitations. SMR systems in the process of transition to wide-area enhanced SMR services are likely to experience significant capacity constraints. To require resale in such circumstances would potentially degrade service to all customers, in contravention of the public interest.

Respectfully submitted,

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Dated: August 23, 1996

**CERTIFICATE OF SERVICE**

I, Rochelle L. Pearson, hereby certify that on this 23rd day of August 1996, caused a copy of the attached Petition for Reconsideration or Clarification of Nextel Communications, Inc. to be served by hand delivery or first-class mail, postage prepaid to the following:

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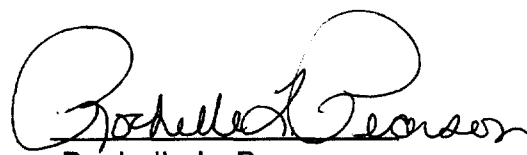
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